Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

State of Arkansas,

Petitioner,

V.

James Patrick Keenom,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

PETITION FOR A WRIT OF CERTIORARI

MARK PRYOR
Arkansas Attorney General

BY: DAVID R. RAUPP
Senior Assistant Attorney General

*JEFFREY A. WEBER
Assistant Attorney General
200 Catlett-Prien Tower Bldg.
323 Center Street
Little Rock, AR 72201
(501) 682-2108

**Counsel of Record*

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QUESTION PRESENTED

May law-enforcement officers, consistently with the Fourth Amendment, rely on a reasonable suspicion that a suspect is engaging in illegal activity to question the suspect in a location other than where the reasonable suspicion was formed?

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OPINIONS BELOW

The opinions of the Supreme Court of Arkansas are reported at 349 Ark. 381, 80 S.W.3d 743 and 349 Ark. 399-A.

JURISDICTION

The Supreme Court of Arkansas entered its judgment in this case on June 20, 2002, and denied rehearing on September 5, 2002. Appendix A-1, A-23. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

At approximately 7:15 p.m., on March 7, 2000, Officer David Jones of the Rogers, Arkansas Police Department, was in Wal-Mart shopping with his family when he noticed the respondent who had two cans of acetone, several bottles of rubbing alcohol, and a couple of packages of coffee filters in his shopping cart. (R. 112) These were the only items in his cart, and the officer knew them to be ingredients for making methamphetamine. Officer Jones watched the respondent as he paid for the items, went to the parking lot, and put the items in his pickup truck. (R. 113) The respondent then re-entered the store. Officer Jones saw him talking to another man who had eight bottles of Heet brand fuel cleanser and two containers of camping fuel. The officer knew these items also are ingredients for producing methamphetamine. (R. 114) When the officer saw the men put the additional items into the respondent's vehicle, he went back into the store and contacted Detective Anthony Noblin, also of the Rogers Police Department, to tell him what he had seen.

Because of the amount of chemicals the respondent was seen buying, Jones and Noblin determined that there was a good possibility that the respondent would be making methamphetamine that evening. Jones obtained the respondent's address by running a computer check of his license plate. The truck Jones had seen the respondent with was registered to James Keenom at an address in Decatur, Arkansas. (R. 115) The two officers went to the Decatur Police Department and got directions to the respondent's residence. It was in a rural area, and, when they arrived, they saw the respondent walking from his truck to the main house on the property. (R. 116) The officers then returned to the Decatur Police Department to assess the situation. (R. 117)

Because Jones and Noblin were in civilian clothes, they asked for the assistance of some uniformed law-enforcement officers. At approximately 11:30 p.m., they decided to return to the respondent's residence. They were accompanied by Deputy Sheriff Cindy Potts and Decatur Police Chief Coy Hendricks. Both

were in their uniforms and driving marked official vehicles. (R. 118-119) When they arrived the second time, the officers talked with the respondent's mother at the main house. She told them that the respondent lived up the dirt road in a trailer and that he did not have telephone. (R. 120-121). She did not have an objection to the officers continuing up the road to the respondent's trailer. (R. 174)

As the officers pulled up to the trailer, the respondent came out to meet them. (R. 122, 157) Jones and Noblin approached him while the other two remained by their vehicles. Jones asked the respondent about the items he had just purchased at Wal-Mart. He did not respond. While they were speaking to the respondent, the officers noticed the curtains inside the trailer moving, and they thought another person was inside. (R. 123) When the officers asked for consent to search the trailer, the respondent refused, but stated that if the officers left and came back ten minutes later, he would feel better about allowing the officers to search. They told the respondent that was not possible, and they continued to question him. When they asked if he had any illegal substances inside the trailer, the respondent told them that he had a quarter gram of methamphetamine. At this point, Noblin read the respondent his rights and placed him under arrest. The respondent said he would continue speaking with the officers and admitted that parts of a methamphetamine lab were in his trailer and that friends of his sometimes used the trailer to make the drug. Although the respondent then gave consent to search, because of the prior denial of consent, the officers went to a judge and obtained a search warrant. (R. 124-125) In the subsequent search of the respondent's trailer, the officers found several pieces of evidence implicating him in making methamphetamine. (R. 126-128)

After the trial court denied his motion to suppress the evidence seized during the search of the trailer, the respondent entered a conditional guilty plea to manufacturing methamphetamine and simultaneous possession of drugs and firearms. He was sentenced to a total of 20 years in the Arkansas Department of Correction. (R. 80). The Supreme Court of Arkansas

reversed the trial court's denial of the motion to suppress, holding that the officers did not have reasonable suspicion to do anything other than stop the respondent when he was seen in the store buying the suspicious items, Appendix A-10, and that the officers had illegally seized the respondent, within the meaning of the Fourth Amendment, when they were talking to him in front of the trailer prior to the arrest. Appendix A-11. The court, therefore, ruled that all of the evidence should have been suppressed as "fruit-of-the-poisonous tree." Appendix A-12.

REASONS FOR GRANTING THE WRIT

The question this petition presents is whether law-enforcement officers could rely on a reasonable suspicion that the respondent was engaged in illegal activity that was formed at a store in Bentonville, Arkansas, to question him at his trailer later that evening in Decatur, Arkansas. In Terry v. Ohio, 392 U.S. 1 (1968), this Court recognized that at times, law-enforcement officers observe a person engage in "a series of acts, each of them perhaps innocent in itself, but which taken together warrant further investigation." Id. at 22. Moreover, the Court has ruled that, while stopping and detaining a person "constitute[s] a seizure within the meaning of the Fourth Amendment, the governmental interest in investigating an officer's reasonable suspicion, based on specific and articulable facts, may outweigh the Fourth Amendment interest" of the person being detained. United States v. Hensley, 469 U.S. 221, 226 (1985).

I. The Decision of the Supreme Court of Arkansas Conflicts with the Decision of Other State and Federal Courts.

The decision of the Supreme Court of Arkansas that the reasonable suspicion law-enforcement officers had only justified them to stop the respondent simultaneously with seeing the suspicious behavior created a conflict on this point. Several courts, both state and federal, have reached the opposite result. In United States v. Martinez, 808 F.2d 1050 (5th Cir. 1987), for example, a DEA agent was in the offices of a chemical company he knew had sold chemicals to methamphetamine manufacturers. While there, he noticed a receipt that listed several chemicals, all used to manufacture methamphetamine, that had recently been sold. An employee identified the person who bought the chemicals, and the agent saw him closing the trunk of his car. The agent then followed the car, and the occupants attempted to evade him. Eventually he stopped it, and found contraband in the trunk. Id. at 1052-1053. The fact that the agent did not stop the suspects in the company's parking lot was not fatal. The Fifth Circuit noted that the agent's

observations at the company offices aroused suspicions, and that following the car was appropriate because it was "a reasonable means of confirming or dispelling his suspicions." Id. at 1053.

State courts also have reached decisions contrary to that of the court in this case. In State v. Monath, 42 S.W.3d 644 (Mo. App. 2001), clerks of two convenience stores contacted police to inform them that two suspects had just purchased a large quantity of cold pills containing precursors of methamphetamine. One officer saw the suspects in the parking lot of one of the stores, but allowed them to leave the parking lot and enter traffic. He subsequently lost contact with the suspects. However, another officer located them and stopped the car. Id. at 646-648. The court ruled that the stop was justified because the officer had a reasonable suspicion based on the information provided by the clerks to the police dispatcher, who then relayed the information to the officers on patrol. Id. at 650. The opinion of the Supreme Court of Arkansas would require the officer to have questioned the supsects in the parking lot, immediately upon seeing them, or forever lose the right to approach them. The court in Monath found that the circumstances surrounding the events justified stopping the supsects in a location other than where the reasonable suspicion had been formed.

Similarly, the court in State v. Vereb, 643 N.W.2d 342 (Minn. App. 2002), that the stop and search of a vehicle after its occupants were observed in Wal-Mart buying a large amount of cold tablets was justified by the officer's reasonable suspicion that was based on information provided to police by store employees. Even though the suspicious behavior occurred inside the store, the stopping of the suspects at a different location was justified. Id. at 347.

The actions of the law-enforcement officers in this case were no different than those of the officers in Martinez, Monath, and Vereb. They acted on reasonable suspicion to detain a suspect so that they could investigate possible criminal activity. The officers reasonable suspicion was not diminished simply because they made contact with the suspect on his porch instead of on a roadway. The

sole reason the Supreme Court of Arkansas ruled that the evidence here should have been suppressed was that, in its view, a reasonable person would not have felt "free to terminate the encounter with police and return to the safety and privacy of his house." Appendix A-10. However, it is not contested that the respondent was seized within the meaning of the Fourth Amendment. Not every seizure, however, is an arrest that requires probable cause. E.g., Florida v. Royer, 460 U.S. 491, 498 (1983). When an officer detains a person for an investigatory purpose, "[t]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot.' " United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)).

The Supreme Court of Arkansas held that Officer Jones had reasonable suspicion when he first encountered the respondent in Wal-Mart, and it was not diminished when the officers confronted him later that evening. Thus, the basis for reversing the denial respondent's motion to suppress is eliminated. The decision of the state supreme court that the reasonable suspicion was somehow no longer in effect is inconsistent with decisions of other appellate courts and this Court's prior decisions. These inconsistent decisions result in law-enforcement officers with being faced differing interpretations of the Fourth Amendment and this Court's prior decisions when they look to the courts to provide guidance in how best to do their duty in compliance with constitutional mandates. The Court should grant the petition to resolve the conflict of authority and make the law uniform.

CONCLUSION

For the reasons and authorities set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK PRYOR
Arkansas Attorney General

BY: ***JEFFREY A. WEBER**
Assistant Attorney General
200 Catlett-Prien Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-2018

**Counsel of Record*